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UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
SANTA ANA DIVISION

In re:

**THE LITIGATION PRACTICE
GROUP, P.C.,**

Debtor.

Case Number 8:23-bk-10571-SC

Chapter 11

**UNITED STATES TRUSTEE'S
RESPONSE TO STATUS REPORT
FILED BY MORNING LAW GROUP,
P.C. PURSUANT TO THE COURT'S
INSTRUCTIONS**

**TO THE HONORABLE SCOTT CLARKSON, UNITED STATES
BANKRUPTCY JUDGE, DEBTOR, DEBTOR'S COUNSEL, CHAPTER 11
TRUSTEE, AND ALL PARTIES IN INTEREST:**

The United States Trustee files this Response (the "Response") to Status Report (the
"Status Report") by Morning Law Group, P.C. ("MLG"). Pursuant to the Court's
Instructions [Bankr. Dkt. # 1259], as set forth below.

1 In the Status Report, MLG states that “[a]n issue with respect to the calculation of
2 payments and the adjustments has emerged. The outcome of this issue will impact the
3 amount ultimately to be paid to the estate . . . MLG’s business and financial information is
4 confidential and proprietary. MLG is prepared to file it under seal or submit it to the
5 Court’s review *in camera*.” Status Report, at p. 2:5-10. Further, MLG states that it
6 provided the Trustee’s counsel with an excel spreadsheet (the “Spreadsheet”) detailing the
7 related calculations from August 4, 2023 through the end of Q1 2024. According to MLG,
8 “[t]he spreadsheet contains highly sensitive, confidential business information of MLG,
9 which MLG will promptly provide to the Court in camera if requested.” *Id.* at p. 3:2-5.
10 Finally, MLG requests the Court to authorize any “further reporting *in camera* or under
11 seal.” *Id.* at p. 3:11.

12 **A. Section 107(a) of the Bankruptcy Code Affirms the Long-Standing**
13 **Presumption of Public Access to Court Records.**

14 There is a strong presumption and public policy in favor of public access to court
15 records. *See In re Motors Liquidation Co.*, 561 B.R. 36, 41 (Bankr. S.D.N.Y. 2016); *In re*
16 *Borders Grp., Inc.*, 462 B.R. 42, 46 (Bankr. S.D.N.Y. 2011); *In re Food Mgmt. Grp., LLC*,
17 359 B.R. 543, 553-55 (Bankr. S.D.N.Y. 2007) (“The public interest in openness of court
18 proceedings is at its zenith when issues concerning the integrity and transparency of
19 bankruptcy court proceedings are involved”); *see also Nixon v. Warner Commc’ns, Inc.*,
20 435 U.S. 597-98 (1978). “This policy of open inspection, established in the Bankruptcy
21 Code itself, is fundamental to the operation of the bankruptcy system and is the best means
22 of avoiding any suggestion of impropriety that might or could be raised.” *Motor*
23 *Liquidation*, 561 B.R. at 41-42 (citation omitted).

24 Section 107 of the Bankruptcy Code sets forth the legal standard applicable to
25 sealing information. *See also* F.R.B.P. 9018. Section 107(a) of the Bankruptcy Code
26 provides, in part, that:
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a paper filed in a case under this title and the dockets of a
bankruptcy court are *public records and open to examination* by
an entity at reasonable times without charge.

11 U.S.C. § 107(a) (emphasis added).

Section 107(b) of the Bankruptcy Code provides in relevant part that:

[o]n request of a party in interest, the bankruptcy court shall, and
on the bankruptcy court's own motion, the bankruptcy court may

-
- (1) protect an entity with respect to a trade secret or confidential research, development, or commercial information; or
 - (2) protect a person with respect to scandalous or defamatory matter contained in a paper filed in a case under this title.

11 U.S.C. § 107(b).

Section 107(b)(1) is implemented by Rule 9018, which provides:

On motion or on its own initiative, with or without notice, the court may make any order which justice requires (1) to protect the estate or any entity in respect of a trade secret or other confidential research, development, or commercial information, (2) to protect any entity against scandalous or defamatory matter contained in any paper filed in a case under the Code, or (3) to protect governmental matters that are made confidential by statute or regulation. If an order is entered under this rule without notice, any entity affected thereby may move to vacate or modify the order, and after a hearing on notice the court shall determine the motion.

Feb. R. Bankr. P. 9018. Accordingly, a limited exception to public disclosure may be invoked to protect “an entity with respect to a trade secret or confidential research, development or commercial information.” 11 U.S.C. § 107(b)(1); *accord* Fed. R. Bankr. P. 9018.

B. Section 107(b) of the Bankruptcy Code is Narrowly Construed and a Denial of Open Access to Court Records Must Be Supported by Evidence.

This “exception to the general right of access in section 107(b) is narrow” and

1 should only be entered when actually necessary to protect a party from harm. *See In re*
2 *Borders Grp., Inc.*, 462 B.R. 42, 47 (Bankr. S.D.N.Y. 2011); *see also In re Anthracite*
3 *Cap., Inc.*, 492 B.R. 162, 171 (Bankr. S.D.N.Y. 2013) (finding that “a court’s ability to
4 limit the public’s right to access remains an extraordinary measure that is warranted only
5 under rare circumstances as public monitoring is an essential feature of democratic
6 control.”) (internal quotations omitted) (emphasis added).

7 Where a party seeks to have court records sealed because of the purported
8 economic consequences of disclosure, courts have demanded more than mere argument and
9 speculation. *See, e.g., Republic of the Philippines*, 949 F.2d 653, 663 (3d Cir. 1991) (a
10 party must offer “evidence ... to substantiate its claim that the disclosure of ... records ...
11 would result in any type of competitive disadvantage”); *Joy v. North*, 692 F.2d 880, 894
12 (2d Cir. 1982) (report filed in court in connection with a shareholder derivative action
13 could not be sealed based on “a naked conclusory statement that publication of the Report
14 will injure the bank in the industry.”); *In re Barney’s, Inc.*, 201 B.R. at 708 (“speculat[ion]
15 that the public disclosure of ... letter will adversely impact debtors reorganization efforts”
16 insufficient to justify sealing record); *In re Fibermark, Inc.*, 330 B.R. 480, 506 (Bankr. D.
17 Vt. 2005) (“that information might ‘conceivably’ or ‘possibly’ fall within a protected
18 category is not sufficient to seal documents”); *Publicker Indus., Inc. v. Cohen*, 733 F.2d
19 1059, 1071-73 (3d Cir. 1059) (court must make “specific findings” as sealing cannot be
20 based on speculation).

21 Under Section 107(b), “commercial information” has been defined as information
22 which would cause an “unfair advantage to competitors by providing them information as
23 to the commercial operations” of the requesting party. *See In re Orion Pictures Corp.*, 21
24 F.3d 24, 27 (2d Cir. 1994)(internal quotations omitted); accord *Borders*, 462 B.R. at 47.

25 The “commercial information” exception is not intended to offer a safe harbor for
26 those who crave privacy or secrecy for its own sake.” *Motors Liquidation*, 561 B.R. at 43
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1 (quoting *In re Dreier LLP*, 485 B.R. 821, 822-23 (Bankr. S.D.N.Y. 2013)). “Evidence – not
2 just argument—is required to support the extraordinary remedy of sealing.” *Id.* at 43;
3 *accord Dreier*, 485 B.R. at 823 (finding that “conclusory statements in [a declaration] are
4 not probative”).

5 A party seeking to deny public access to court documents must overcome a strong
6 presumption by demonstrating, with specificity, the precise harm that will flow from the
7 disclosure. *In re Cendant Corp.*, 260 F.3d 183, 194 (3d Cir. 2001) (“[i]n delineating the
8 injury to be prevented, specificity is essential [b]road allegations of harm, bereft of
9 specific examples or articulated reasoning, are insufficient”); *In re Anthracite Capital, Inc.*,
10 492 B.R. 162, 170 (Bankr. S.D.N.Y. 2013) (there is a “strong presumption” in favor of
11 public access).

12 The burden is on the moving party to show that a request to place documents
13 under seal falls within the parameters of Section 107(b). *Id.* at 46; *Food Mgmt.*, 359 B.R.
14 at 561. To meet this burden, the movant “must demonstrate extraordinary circumstances
15 and compelling need to obtain protection.” *Food Mgmt.*, 359 B.R. at 561 (citing *In re Orion*
16 *Pictures Corp.*, 21 F.3d 24, 27 (2d Cir. 1994)). “The moving party bears the burden of
17 demonstrating that the information it is seeking to protect from public viewing is both
18 commercial and confidential.” *In re Williams*, 2017 WL 6278764, at *3 (Bankr. W.D. Va.
19 Dec. 8, 2017) (citation omitted).

20 In the Status Report, MLG does not cite any authority holding that the type of
21 information it seeks to seal is both confidential and commercial information under the
22 Bankruptcy Code. In particular, MLG has not identified any trade secret or confidential
23 research, development or commercial information that requires this Court’s protection in
24 this instance. MLG has not provided any explanation of how anything in the Spreadsheet
25 or any “further reporting” meets any criteria under § 107 for sealing.

26 Instead, it provided conclusory statements that the Spreadsheet contains “highly
27 sensitive, confidential business information of MLG.” Status Report, at p. 3:4. “To put it
28 clearly, just because information may be ‘confidential’ does not mean it is ‘commercial

1 information' entitled to the extraordinary procedure of sealing." *Motors Liquidation*, 561
2 B.R. at 44. MLG bears the burden to show that the calculations of payments and the
3 adjustments constitute a "trade secret or confidential research, development or commercial
4 information." Moreover, MLG has not identified any harm that would result from public
5 disclosure of the calculations and Spreadsheet. MLG has not delivered an unredacted copy
6 of the Spreadsheet to the United States Trustee, as required.

7 Because MLG has failed to meet its burden under § 107 to seal the Spreadsheet or
8 any further reporting, any motion to seal should be denied.

9 PETER C. ANDERSON
10 UNITED STATES TRUSTEE

11 Dated: May 31, 2024

12 By: /s/ Kenneth Miskin
13 Kenneth M. Miskin
14 Assistant United States Trustee
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PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:
OFFICE OF THE UNITED STATES TRUSTEE, 411 West Fourth St., Suite 7160, Santa Ana, CA 92701

A true and correct copy of the foregoing **UNITED STATES TRUSTEE'S RESPONSE TO STATUS REPORT FILED BY MORNING LAW GROUP, P.C. PURSUANT TO THE COURT'S INSTRUCTIONS**

will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On **May 31, 2024**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

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2. SERVED BY UNITED STATES MAIL: On **May 31, 2024**, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

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17542 17th St, Suite 100, Tustin, CA 92780

Committee of Unsecured Creditors

c/o Fox Rothschild LLP, Attn: Nicholas A. Koffroth
10250 Constellation Blvd., Suite 900
Los Angeles, CA 90067

Consumer Privacy Ombudsman

Lucy L. Thomson
1455 Pennsylvania Avenue, N.W. Suite 400
Washington, D.C. 20004

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on **May 31, 2024**, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.
I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

DATED: 5/31/24 Tari King s/s Tari King